

RICHARD JASON JONES                      §  
v.                      §          CIVIL ACTION NO. 9:09cv26  
DIRECTOR, TDCJ-CID                      §

The Petitioner Richard Jones, proceeding *pro se*, filed this civil action purportedly as an application for the writ of habeas corpus under 28 U.S.C. §2254. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Magistrate Judge ordered Jones to file an amended petition setting out his claims with more factual specificity, and to pay the filing fee or submit an application for leave to proceed *in forma pauperis* which is accompanied by a certified inmate trust account data sheet, as required by 28 U.S.C. §1915(b). Jones filed an application for leave to proceed *in forma pauperis* but did not include a data sheet, and submitted a three-page attachment which the Magistrate Judge liberally construed as an amended petition.

After review of the pleadings and documents, the Magistrate Judge issued a Report on May 19, 2009, recommending that the petition be dismissed. The Magistrate Judge noted that Jones had never paid the filing fee or furnished the required data sheet, and so the petition was amenable to dismissal for failure to prosecute. More pertinently, however, the Magistrate Judge noted that Jones' claims challenged the conditions of his confinement rather than the fact or legality of his detention, and thus were not properly the subject of a habeas corpus petition. The Magistrate Judge therefore

recommended that the petition be dismissed with prejudice as to its refiling on the form of a habeas corpus petition, but without prejudice to Jones' right to file a civil rights lawsuit raising the same claims as herein presented. The Magistrate Judge also recommended that Jones be denied a certificate of appealability.

A copy of this Report was sent to Jones at his last known address, return receipt requested, but no objections have been received; accordingly, Jones is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

The Court has reviewed the pleadings in the cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

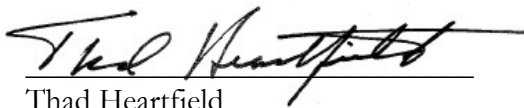
ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice as to its refiling as a habeas corpus petition, but without prejudice as to its refiling in the form of a civil rights lawsuit, in state or federal court. It is further

ORDERED that the Petitioner Richard Jones is hereby DENIED a certificate of appealability *sua sponte*, with the denial of such certificate pertaining only to the present habeas corpus petition and having no effect upon Jones' right to seek relief through the vehicle of a civil rights lawsuit in state or federal court. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

**SIGNED** this the 26 day of **August, 2009**.

  
Thad Heartfield  
United States District Judge